

OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 150
DEPARTMENT OF REVENUE

FILED

10/21/2021 1:14 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Grocery, Vehicle, and Insurer Exclusions, Costs Subtraction, and Estimated Payments.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/18/2021 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Katie Thiel
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/18/2021

TIME: 9:00 AM

OFFICER: Katie Thiel

ADDRESS: Remote Hearing - Video/Conference Call

955 Center Street NE

Salem, OR 97301

SPECIAL INSTRUCTIONS:

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NEED FOR THE RULE(S)

150-317-1060 Amends rule to align with Oregon Laws 2021, chapter 572 statutory amendments that exclude foreign and alien insurers that are subject to retaliatory tax under ORS 731.854 and 731.859 from corporate activity tax.

150-317-1150 Provides guidance to assist taxpayers in determining whether receipts from retail sales of food items may be excluded from the taxpayer's commercial activity under ORS 317A.100(1)(b)(EE). Amendment adds provisions

for the exclusion of consignment sales receipts, fees and commissions from gross receipts as provided in Oregon Laws 2021, chapter 572. Adds a definition of "consignment" and an example to illustrate consignment retail sales of groceries. 150-317-1200 Provides guidance to assist taxpayers in how to compute the cost inputs or labor costs subtraction for purposes of the Oregon corporate activity tax. Amendments to the rule clarify the fiscal year election is repealed for tax years beginning on or after January 1, 2021, by amendments to ORS 317A.119 made by Oregon Laws 2021, chapter 572.

150-317-1300 Amends rule to align estimated payment due dates with Oregon Laws 2021, chapter 572 statutory amendments that require taxpayers that use a filing period other than a calendar year to use the same filing period used for federal filing purposes.

150-317-1410 Provides guidance regarding documentation that a vehicle dealer must retain in order to exclude receipts from commercial activity as provided is ORS 317A.100(1)(b)(W). Amendment adds provisions for the transfer of new vehicles between franchised dealerships as provided in Oregon Laws 2021, Chapter 572.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Oregon Revised Statutes: 317A.100 – 317A.161, https://www.oregonlegislature.gov/bills_laws
Oregon Laws 2021, chapter 572, https://www.oregonlegislature.gov/bills_laws

FISCAL AND ECONOMIC IMPACT:

Oregon Laws 2021, chapter 572, as adopted per Senate Bill 164, made several changes to ORS chapter 317A that require the amendment of current rules. Those changes to the corporate activity tax include an expanded exclusion of receipts for grocery sales of a person that owns groceries at the time of sale and certain consignee compensation; a provision that foreign or alien insurance companies subject to retaliatory tax are excluded persons for purposes of the corporate activity tax; an exclusion for certain receipts of vehicle dealers; the repeal of the fiscal year election for the cost inputs or labor costs subtraction from commercial activity; and an adjustment of the estimated payment due dates to accommodate both calendar year and fiscal year filers. The amended rules provide additional guidance regarding the amendments to ORS chapter 317A. There is no fiscal or economic impact resulting from the amendment of these rules as the statutes implemented are what cause the impact, if any.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) There is no impact on state agencies or units of local government with the amendment of these rules.

The amendment to 150-317-1300 providing guidance on estimated payment due dates and the amendment to 150-317-1200 providing guidance on the subtraction affect a variety of taxpayers subject to the corporate activity tax, whereas the amendments to 150-317-1060, 150-317-1150, and 150-317-1410 impact specific businesses or industries. These specific businesses include those that are engaged in selling groceries on consignment, motor vehicle dealers that exchange new vehicles between franchised motor vehicle dealerships, and foreign and alien insurers that are subject to the retaliatory tax. However, this impact on cost of compliance including administrative and professional services, are generally a result of statutory requirements within chapter 317A. The department does not anticipate any additional cost directly related to the amendment of these rules. It is anticipated that guidance provided in these rules will clarify reporting and recordkeeping requirements which will reduce or lead to more focused questions from taxpayers and tax professionals and will clarify potential issues in audits or litigation.

(2)(a) All entity types with more than \$1 million in gross receipts are required to file a corporate activity tax return. In the 2019 Legislative Revenue's estimate, it was estimated that approximately 40,000 businesses will be subject to the

corporate activity tax. Based on this information, we estimate Oregon has approximately 11,500 small businesses with fewer than 50 employees that are subject to corporate activity tax. We estimate that all 11,500 small businesses will be subject to OAR 150-317-1200 and OAR 150-317-1300.

Out of the estimated 11,500 small businesses that are subject to the corporate activity tax, we estimate that 50 small businesses that are foreign or alien insurance companies and subject to retaliatory tax will be subject OAR 150-317-1060.

Out of the estimated 11,500 small businesses that are subject to corporate activity tax, we estimate that 60 grocery consignee store operators will be subject to the amendments of OAR 150-317-1150 excluding receipts from sales, fees, or commissions from consignment of groceries.

Out of the estimated 11,500 small businesses that are subject to corporate activity tax, we estimate that 100 businesses that exchange new vehicles between franchised motor vehicle dealerships will be subject to OAR 150-317-1410.

(b) General recordkeeping requirements such as documentation to substantiate inventory, deductions, and credits are already required under both federal and state law. We don't anticipate additional costs for professional services to comply with the requirements of these rules.

(c) None known.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The rules being amended affect a wide range of corporate activity tax taxpayers and various industries. For this reason, the Department shared drafts of these rules with a group of practitioners, stakeholders, and organizations that represent taxpayers that are subject to the corporate activity tax including small businesses and requested their input and feedback. This group included members of Oregon Business & Industry, Evershed Sutherland firm, Oregon Society of Certified Public Accountants, Oregon State Bar, Oregon Association of Tax Consultants, and Smart Growth Coalition, as well as several accounting firms with clients from various industries. In addition, the department will be notifying interested parties of the rule making process for these rules including the public hearing prior to adopting these amended rules as permanent. During the public comment period, stakeholders, including small businesses, can provide the department with feedback on these rules.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

No, the Department of Revenue did not consult a formal advisory committee for these rules. The Department reached out to a group of stakeholders and their representatives to request input on these rules.

RULES PROPOSED:

150-317-1060, 150-317-1150, 150-317-1200, 150-317-1300, 150-317-1410

AMEND: 150-317-1060

RULE SUMMARY: Amend rule to align with Oregon Laws 2021, chapter 572 statutory amendments that exclude foreign and alien insurers that are subject to retaliatory tax under ORS 731.854 and 731.859 from Commercial Activity Tax (CAT).

CHANGES TO RULE:

150-317-1060

Definition of Insurers Gross Premiums Receipts

(1) For purposes of determining an insurer's commercial activity subject to the Corporate Activity Tax, "insurance premiums" are the following premiums received by an insurer, unless otherwise excluded under ORS 317A.100:¶

(a) All gross direct life, gross direct accident and health, and gross direct property and casualty insurance premiums written, as reported on the statement of premiums accompanying the annual statement required to be

filed with the Director of the Department of Consumer and Business Services under ORS 731.574 that allocate premiums by jurisdiction.¶

(b) The gross amount of surplus lines insurance premiums written on Oregon home state risks, as shown in the report required by ORS 735.465.¶

(2) The Corporate Activity Tax described in ORS 317A.100(1)(a)(C) applies to insurers that meet that definition under ORS 317A.100(10) and that receive the insurance premiums described in section (1) of this administrative rule; for tax year 2020, the provisions in ORS 731.840 do not apply to the Corporate Activity Tax.¶

(3) For tax years beginning on or after January 1, 2021, foreign and alien insurers that are subject to the retaliatory tax imposed under ORS 731.854 and 731.859 are "excluded persons" and are not subject to the Corporate Activity Tax.¶

[Publications: Contact the Oregon Department of Revenue for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and ORS 183.355(1)(b).]

Statutory/Other Authority: ORS 305.100, 317A.128, 317A.143

Statutes/Other Implemented: ORS 317A.100, 317A.128

AMEND: 150-317-1150

RULE SUMMARY: Provides guidance to assist taxpayers in determining whether receipts from retail sales of food items may be excluded from the taxpayer's commercial activity under ORS 317A.100(1)(b)(EE). Adds provisions for the exclusion of consignment sales receipts and fees and commissions from gross receipts as provided in Oregon Laws 2021, Chapter 572. Adds a definition of "Consignment" and an example to illustrate consignment retail sales of groceries.

CHANGES TO RULE:

150-317-1150

Retail Sale of Groceries Exclusion

(1) Definitions. For purposes of this rule, the following definitions apply:

(a) "Store" means the location from which a taxpayer sells goods at retail to the final consumer for home consumption. "Store" includes both physical locations and online storefronts.

(b) "Consignment" refers to a model whereby groceries sold at retail are owned by one person, but the sale of such products is effected by a separate person which receives a commission or fee from the product owner for their role in effecting the sale.

(2) Excludable receipts from retail sales. Receipts from retail sales of groceries, including groceries sold by consignment, are excludable from a taxpayer's commercial activity under ORS 317A.100(1)(b)(EE). The exclusion applies only to receipts from the sale of groceries as that term is defined in ORS 317A.100(8), which are sold at retail to the final consumer for home consumption. The determination as to whether an item is sold to a consumer for home consumption is based on the type of item sold and the circumstances of the sale. The determination is based on whether the seller typically expects that the sale of food from a specific store is purchased for home consumption.

(3) Factors indicating home consumption. The determination as to whether a store typically sells groceries at retail for home consumption rests on specific facts and circumstances. When determining whether a store typically makes grocery retail sales for home consumption, the department will consider factors such as (but not limited to):

(a) Whether the store's average gross receipts from the sale of hot food is greater than the average gross receipts from the sale of groceries.

(b) Whether the store offers on-site dining facilities, and if so, whether the percentage of total floor space allotted to dining facilities for customers is greater than the percentage of floor space dedicated to shelves displaying groceries available to customers for retail sale.

(c) Whether the store advertises itself as being engaged in the sale of hot food or ready-to-eat food.

(4) The list of factors in section (3) is nonexclusive, and the factors will be considered only to the extent that they are relevant. The department may consider any other relevant facts and circumstances.

(5) Examples.

Example 1: McPherson's Convenient Coffee Shop is located on the first floor of a large office building and is open from 6:00 a.m. to 3:00 p.m. Monday through Friday. McPherson's sells hot coffee and an assortment of baked goods, which are warmed or toasted before being served to the customer. In addition, McPherson's sells a variety of packaged snacks, candy, bottled water and juice. The store has little on-site seating; most customers consume the purchased food off-site. McPherson's markets itself as a convenient place for office workers to buy a cup of coffee or purchase a quick mid-day snack. Seventy-five percent of McPherson's sales are from hot foods. Based on the business's advertising and the fact that the majority of gross receipts are from hot prepared food, McPherson's does not typically intend or expect the food items sold from their store to be consumed at the purchaser's home. Therefore, McPherson's may not exclude any receipts under ORS 317A.100(1)(b)(EE).

Example 2: Clarendon's Cupboard is a small neighborhood convenience store open seven days a week from 5:00 a.m. to 11:00 p.m. Clarendon's sells a wide variety of items, including cigarettes, tobacco, bottled soda, candy, and some grocery staples, such as bread, eggs, milk, and cheese. From noon to 3:00 p.m., Clarendon's also sells hot prepared food for immediate consumption, such as hot dogs, fried chicken, and hot pizza by the slice. Clarendon's does not offer any on-site seating. Clarendon's advertises itself as a convenient place to buy cigarettes, purchase a hot lunch or a quick snack, and pick up a few groceries on the way home from work. Sales of cigarettes, tobacco, and other nonfood items constitute sixty percent of Clarendon's gross receipts. Receipts from the sale of cold food (i.e., grocery staples and various snacks and candy items) constitute thirty percent of Clarendon's gross receipts, while receipts from the sale of hot prepared food (i.e., hot dogs, and hot prepared pizza) constitute less than ten percent of Clarendon's gross receipts. Based on the business's advertising, and the fact that Clarendon's gross receipts from the sale of cold food outweigh the gross receipts from the sale of hot food, the food items sold by the store are typically intended for the purchaser's consumption at home. Clarendon's may exclude receipts from the

sale of grocery staples and snacks, as these items are "groceries" as defined in ORS 317A.100(8). Clarendon's may not exclude receipts from the sale of hot prepared food such as hot dogs and hot pizza, as these items are not groceries. ¶

Example 3: Frontier Foods is a corporation which owns products meeting the definition of groceries under ORS 317A.100(8). Frontier Foods contracts with Consignment Shop Operator to sell these groceries on consignment at retail to consumers for home consumption. Consignment Shop Operator is paid a periodic commission by the Frontier Foods corporation based on their store's sales. Consignment Shop Operator may exclude the portion of the commission paid to them by the Frontier Foods corporation and attributable to the sale of groceries intended for home consumption. Additionally, the Frontier Foods corporation may also exclude receipts attributable to the sale of groceries intended for home consumption.¶

(6) Safe Harbor for Stores Authorized as Retail Food Stores Under 7 U.S.C. 2012(o) or Qualifying as Retail Food Stores for Purposes of the Supplemental Nutrition Assistance Program (SNAP). The sale of a grocery item, as defined in ORS 317A.100(8), by a store authorized as a retail food store under 7 U.S.C. 2012(o), with a valid permit as a SNAP qualified retail food store from the U.S. Department of Agriculture, is considered the retail sale of groceries for home consumption; and excluded from the taxpayer's commercial activity. Receipts from the sale of groceries realized by a store that meets the requirements to qualify as a retail food store under 7 U.S.C. 2012(o), regardless of whether the store holds a permit as a SNAP qualified retail food store from the U.S. Department of Agriculture, are also considered the retail sales of groceries for home consumption and are excluded from the taxpayer's commercial activity, provided that the taxpayer can demonstrate that the store meets the requirements to qualify as a retail food store under 7 U.S.C. 2012(o).¶

(7) A store may not exclude receipts under ORS 317A.100(1)(b)(EE), if the store's receipts from the sale of hot food or hot prepared food constitutes 80 percent or more of the total receipts that the store realized from the sale of all food items. The fact that the store's receipts are at least 80 percent from sales of hot food or hot prepared food is evidence that the store does not intend to sell, or typically sell, groceries to the final consumer for home consumption; therefore, sales from the store are not excludable as retail sales of groceries.¶

[Publications: Contact the Oregon Department of Revenue for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and ORS 183.355(1)(b).]

Statutory/Other Authority: ORS 305.100, 317A.143

Statutes/Other Implemented: ORS 317A.100(1)(b)(EE), 317A.100(8)

RULE SUMMARY: Provides guidance to assist taxpayers in how to compute the cost inputs or labor cost subtraction for purposes of the Oregon corporate activity tax. Amendments to the rule clarify the fiscal year election is repealed for tax years beginning on or after January 1, 2021, by amendments to ORS 317A.119 made by Oregon Laws 2021 chapter 572.

CHANGES TO RULE:

150-317-1200

Cost Input or Labor Cost Subtraction

(1) The subtraction provided in ORS 317A.119 includes all labor costs or cost inputs of a taxpayer, whichever is greater, regardless of the place the labor cost or cost input is incurred, except for cost inputs or labor costs that are attributable to the taxpayer's receipts from an item that is not commercial activity. For purposes of the subtraction, a unitary group, as determined pursuant to ORS 317A.106, must include the labor costs or cost inputs of all members of the unitary group, regardless where incurred, except for expenses from transactions among members of the group as provided in ORS 317A.119(2)(a) for which receipts are excluded under ORS 317A.106. ¶

(2) Determining Costs Eligible for Subtraction. Costs described in ORS 317A.119(2)(a) and (b) ("ineligible costs") are not eligible for subtraction. "Eligible costs" equals 35 percent of the greater of (A) the excess of total labor costs over the amount of labor costs that are ineligible costs or (B) the excess of total cost inputs over the amount of cost inputs that are ineligible costs. ¶

(a) If a taxpayer can reasonably determine, from the taxpayer's books and records maintained in the ordinary course of business, how much of its total labor costs or cost inputs are ineligible costs or that it has no ineligible costs, the taxpayer may calculate the subtraction using the appropriate method under section (3), unless otherwise permitted or required under this rule. ¶

Example 1: South Street operates an automotive repair shop. All but an incidental amount of South Street's receipts are from commercial activity. South Street's labor costs are greater than its cost inputs. All South Street's employees perform their activities primarily for the purpose of producing receipts that are included in commercial activity. Because South Street can reasonably determine from its books and records that all its labor costs are attributable to commercial activity, South Street may use the general rule for determining its cost subtraction. ¶

(b) A taxpayer who cannot reasonably determine how much of either its total labor costs or cost inputs are ineligible costs based on its books and records may use a reasonable method to approximate eligible costs. The taxpayer must document the approximation method used and retain the documentation in the taxpayer's records. Documentation must be provided to the department upon request. The department may disallow the approximation method used under this section if it does not reasonably approximate the taxpayer's eligible costs. ¶

(3) General Rule. Computation of subtraction for eligible costs after reduction of ineligible costs. ¶

(a) If all the taxpayer's commercial activity is sourced to Oregon, the taxpayer's subtraction equals its eligible costs. ¶

(b) If the taxpayer has commercial activity both within and without Oregon, the taxpayer must apportion the taxpayer's eligible costs as follows, unless the taxpayer elects to use the substitute rule under section (4). ¶

(A) If the corporate activity taxpayer is identical to the entity or group of entities reporting on the apportionment schedule filed for purposes of Oregon income or excise tax under ORS chapters 314, 316, 317, or 318, that taxpayer must multiply its eligible costs by the apportionment factor percentage from the taxpayer's Oregon apportionment schedule filed under ORS chapters 314, 316, 317, or 318 to calculate the subtraction amount. The taxpayer must use the apportionment schedule filed with the most recent return covering a 12-month period filed with the department. ¶

(B) If a corporate activity taxpayer is not identical to the entity or group of entities reporting on the apportionment schedule filed for purposes of Oregon income or excise tax under ORS chapters 314, 316, 317, or 318, the taxpayer must compute its Oregon apportionment factor percentage using the applicable apportionment method under ORS chapters 314 or 317, except as otherwise required or permitted under this rule. The taxpayer must multiply its eligible costs by the computed apportionment factor percentage. ¶

(c) Notwithstanding section (3)(b), unitary group taxpayers with members subject to multiple apportionment methods under ORS chapters 314 or 317 must compute the group's eligible costs as follows, except as otherwise required or permitted under this rule. ¶

(A) Separate the unitary group into subgroups. Each subgroup consists of members that use the same apportionment method under ORS chapter 314 or 317. ¶

(B) Each subgroup must separately determine eligible costs as required under section (2) of this rule. ¶

(C) Each subgroup must separately compute their apportionment factor using the applicable apportionment

method under ORS chapter 314 or 317, except that transactions between all unitary group members must be eliminated, regardless of whether transactions are between or among unitary group members subject to sales factor apportionment under ORS 314.650 or those subject to another apportionment method under ORS chapter 314 or 317. ¶

(D) Each subgroup must multiply its eligible costs, as determined under section (2) of this rule, by the subgroup's apportionment factor percentage determined under subsection (3)(c)(C). ¶

(E) The unitary group's subtraction is the sum of the apportioned eligible costs of each subgroup. ¶

Example 2: Rosslyn Inc., McPherson Corp., Palisades Inc., and Delta Inc. are a unitary group under ORS 317A.100(19) and must file as a single taxpayer under 317A.106. For Oregon income tax purposes, Rosslyn Inc., and McPherson are required to apportion using the sales factor under ORS 314.650. Delta and Palisades are telecommunications firms that elect to use the double-weighted sales apportionment factor under ORS 314.650 (1999 Edition) for their Oregon income tax return per OAR 150-314-0060. As the unitary group members are subject to multiple apportionment methods under ORS 314, the group must determine and apportion eligible costs under section (3)(c) of this rule, forming two subgroups: Subgroup A includes sales and eligible costs from Rosslyn and McPherson. Subgroup B includes Delta and Palisades. After eliminating transactions between all unitary group members, Subgroup A, calculates its sales factor apportionment factor pursuant to ORS 314.650, to be 11.1110%. The eligible costs of ¶

Subgroup A, determined in accordance with section (2) of this rule, are \$2 million. After applying the apportionment factor percentage to eligible costs, Subgroup A has apportioned eligible costs of \$222,2020 (\$2 million x 11.1110% = \$222,2020). ¶

Subgroup B, after eliminating all transactions between unitary group members, calculates the double weighted apportionment factor pursuant to OAR 150-314-0060, to be 41.6667%. The eligible costs of Subgroup B, determined in accordance with section (2) of this rule, are \$1 million. After applying the double-weighted sales factor apportionment percentage to eligible costs, Subgroup B has apportioned eligible costs of \$416,60067 (\$1 million x 41.6667%). The unitary group adds the apportioned eligible costs from each subgroup to determine the group's total subtraction (\$222,2020 + \$416,60067 = \$638,80087). ¶

(4) Substitute Rule. A taxpayer may, in lieu of calculating and apportioning eligible costs as required in sections (2) and (3) of this rule, elect to approximate and apportion eligible costs by means of the commercial activity ratio. ¶

(a) Costs for commercial activity ratio. A taxpayer's costs under the commercial activity ratio ("applicable costs") equal 35 percent of the greater of total cost of goods everywhere or total labor costs everywhere, as those costs are determined before application of ORS 317A.119(2)(b). Expenses from transactions among members of a unitary group must be excluded. ¶

(b) Commercial Activity Ratio. The commercial activity ratio is a fraction, the numerator of which is the taxpayer's commercial activity sourced to Oregon and the denominator of which is the sum of the taxpayer's total commercial activity everywhere plus amounts excluded under ORS 317A.100(1)(b)(Q), ORS 317A.100(1)(b)(Y), ORS 317A.100(1)(b)(AA), ORS 317A.100(1)(b)(DD), ORS 317A.100(1)(b)(EE), ORS 317A.100(1)(b)(TT); and ORS 317A.100(1)(b)(VV). Receipts from transactions among unitary group members are not included in either the numerator or denominator. ¶

(c) Subtraction. For purposes of the substitute rule, the taxpayer's subtraction is calculated by multiplying the applicable costs under subsection (a) by the taxpayer's commercial activity ratio under subsection (b). ¶

Example 3: Grocery & TV Mart has \$10 million of Oregon commercial activity and \$70 million of everywhere commercial activity plus exclusions described in section (4)(b) of this rule (\$50 million in commercial activity and \$20 million in receipts from retail sales of groceries, excluded from commercial activity under ORS 317A.100(1)(b)(EE)). Almost all Grocery & TV Mart's employees assist in sales of both groceries and televisions. Grocery & TV Mart cannot reasonably determine from its books and records how much of its labor costs and cost inputs are attributable to sales of groceries excluded from commercial activity under ORS 317A.100(1)(b)(EE), and elects to use the substitute rule under section (4). Grocery & TV Mart has an everywhere labor cost of \$28 million and everywhere cost inputs of \$26 million. ¶

Grocery & TV Mart computes the Oregon subtraction as follows: ¶

Step 1: Determine costs for commercial activity. In this example, labor costs are greater than cost inputs. Multiply labor costs (\$28 million) by 35 percent to determine applicable costs. \$28 million x 35% = \$9,800,000. ¶

Step 2: Determine the commercial activity ratio. ¶

Oregon commercial activity of \$10 million / \$70 million (everywhere commercial activity plus required exclusions) = 14.2857% commercial activity ratio. ¶

Step 3: Determine Grocery & TV Mart's subtraction. Total applicable costs for commercial activity of \$9,800,000 multiplied by commercial activity ratio of 14.2857% = \$1,399,999. ¶

(5) Fiscal Year Election. For purposes of this rule, fiscal year means a period of 12 consecutive months ending on the last day of any month other than December or any taxpayer or unitary group that has made an election under IRC § 441 for a fiscal year which varies from 52 to 53 weeks. A taxpayer or unitary group may elect to use the

taxpayer's or unitary group's most recent fiscal year information for purposes of determining the subtraction under this rule. An election under this section must be made on a timely filed, original return including extensions. An election under this section is binding for and applicable to the tax year in which it is made. This section is repealed for tax years beginning on or after January 1, 2021.¶

(6) Limitations.-¶

(a) The subtraction may not exceed 95 percent of the taxpayer's Oregon commercial activity. ¶

(b) Labor costs may not include total compensation paid to a single employee in excess of \$500,000.¶

(c) Expenses from transactions among members of a unitary group with respect to receipts that are excluded under ORS 317A.106 and ORS 317A.100(1)(b)(FF) are not included in the calculation of the subtraction.¶

(d) A unitary group required to apportion the amount of the subtraction shall include all members of the unitary group for purposes of determining the group's subtraction amount and apportionment ratio, except that the unitary group may not include members excluded from the unitary group pursuant to an election under ORS 317A.106(2).¶

(7) Alternative Apportionment. A taxpayer may petition the department for alternative apportionment, or the department may require alternative apportionment if the application of sections (3) to (5) of this rule does not fairly represent the costs of taxpayer's commercial activity in Oregon.-¶

(a) A petition to use an alternative method of apportionment under section (7) of this rule must be filed in writing with the department. The request must be signed by the taxpayer or the taxpayer's authorized representative and must be filed separately from the taxpayer's return. The request must include a complete explanation of the alternative method as well as an explanation why the application of section (3) to (5) should not be used. Upon receipt of the request, the department will review the request and issue a letter either authorizing or denying the request. If denied, the taxpayer can appeal that action as provided in ORS 305.275. An alternative apportionment method may be used only after receiving written authorization from the department. The authorization may be revoked if, upon audit, the department determines that the alternative method does not fairly represent the costs of taxpayer's commercial activity in Oregon. Once an alternative method has been authorized, that method must be used until a request to change is made and approved by the department or until the authorization is revoked after audit.¶

(b) Factors considered in approving alternative methods of apportionment include but are not limited to whether a modification:-¶

(A) Will fairly and accurately reflect the taxpayer's costs attributable to receipts from commercial activity in Oregon; and¶

(B) Will effectuate an equitable apportionment of the taxpayer's costs attributable to receipts from commercial activity.

Statutory/Other Authority: ORS 305.100, 317A.119, ~~317A.143, 317A.106~~43

Statutes/Other Implemented: ORS 317A.106, 317A.119

AMEND: 150-317-1300

RULE SUMMARY: Amend rule to align estimated payment due dates with Oregon Laws 2021, chapter 572 statutory amendments that require taxpayers that use a filing period other than a calendar year to use the same filing period used for federal filing purposes.

CHANGES TO RULE:

150-317-1300

Estimated Tax: When Estimated Payments Are Required

(1) Estimated tax liability means the tax as computed under ORS chapter 317A, less allowable credits.¶

(2) Every person required to file an Oregon Corporate Activity Tax (CAT) return and expecting to have a tax liability of \$5,000 or more must make estimated tax payments. For purposes of determining whether estimated tax liability exceeds \$5,000, a credit balance resulting from overpayment of tax for a prior year is not taken into account.¶

(3) Estimated tax payments are required, regardless of when a taxpayer exceeds \$1 million of taxable commercial activity.¶

(4) Payments are due on the last day of the ~~month that follows the end of each calendar quarter: April 30, July 31, October 31, and January 31.~~ 4th, 7th, and 10th months of the tax year, and the first month immediately following the end of the tax year.¶

(5) Due dates of payments for short-period returns. If a return is filed for a short period of less than 12 months, estimated tax payments are due as follows:¶

(a) If the period covered is less than three months, only one payment is required. It is equal to 100 percent of the estimated tax and is payable on the due date of the return.¶

(b) If the period covered is three months or longer but less than six months, two payments are required. One-half of the estimated tax is due on the last day of the fourth month, and the balance, if any, is due on or before the due date of the tax return, not including extensions.¶

(c) If the period covered is six months or longer but less than nine months, three payments are required. One-third of the estimated tax is due on the last day of the fourth month, one-third on the last day of the seventh month and the balance, if any, is due on or before the due date of the tax return, not including extensions.¶

(d) If the period covered is nine months or longer, but less than twelve months, four payments are required. One-fourth of the estimated tax is due on the last day of the fourth month, one-fourth on the last day of the seventh month, one-fourth on the last day of the tenth month, and the balance, if any, on or before the due date of the tax return, not including extensions.¶

(6) Tax-exempt persons that have "Unrelated Business Income," as defined in the Internal Revenue Code, must also register, file an Oregon CAT return, and pay the tax, if such person is otherwise subject to those requirements under ORS 317A.100 to 317A.161. If their expected Oregon tax liability is \$5,000 or more, estimated tax payments must be made.¶

(7) Refunds prior to filing of return. Generally, estimated tax payments will not be refunded prior to the taxpayer's filing of the tax return for the year for which the estimated tax payments were made. The fact that the estimated tax payments made exceed the required payments based upon an exception to underpayment is not sufficient cause to refund such excess prior to the filing of the Oregon CAT return. On a case-by-case basis, if a taxpayer establishes to the satisfaction of the department that the facts warrant a refund, the department may issue a refund of estimated taxes prior to the filing of the tax return.¶

(8) Overpayments of tax.¶

(a) Election. When a person files a completed CAT return and the tax calculated on the return is less than the amounts previously paid for that year, the person may make an irrevocable election to have the overpayment of tax either refunded or applied as a payment of estimated tax. The election is made by entering the amount in the appropriate space provided on the CAT return.¶

(b) Application to estimated tax installment. The department will apply the elected overpayment, unless it is subject to an offset under ORS 314.415 and related rules, to the following year's estimated tax payment due on the last day of the fourth month of the taxable year, to the extent that the overpayment of tax is attributable to estimated tax payments received prior to the following year's first quarter estimated tax due date. Payments received after the following year's first quarter estimated tax due date will be applied to estimated tax as of the date the payment is received. In the case of an amended or delinquent return, the amount will be credited to the estimated tax installment as of the date the amended or delinquent return was filed or the date a payment was received, whichever is later.¶

(9) Payments of estimated tax. Except as otherwise specifically provided in section (8) of this rule, the department will credit estimated tax payments as of the date that they are received. The department will apply estimated tax

payments to any prior underpayment and the remainder, if any, will be applied to the next required installment.¶
(10) Requirement to use electronic funds transfer. For tax years beginning on or after January 1, 2020, persons or entities that are required by other tax programs to make estimated payments by electronic funds transfer (EFT) are also required to use that same method for the CAT.¶

(11) Any person or entity that is not required by other tax programs to make estimated tax payments by EFT may use any other method available to make estimated tax payments for the CAT.¶

(12) Notwithstanding section (2) of this rule, taxpayers that expect their annual tax liability for tax year 2020 to be less than \$10,000 are not required to make quarterly estimated payments for tax year 2020.

Statutory/Other Authority: ORS 305.100, 317A.143

Statutes/Other Implemented: ORS 314.415, 314.505, 314.515, 314.518, 317A.137, 317.149

AMEND: 150-317-1410

RULE SUMMARY: Provides guidance regarding documentation that a vehicle dealer must retain in order to exclude receipts from commercial activity as provided is ORS 317A.100(1)(b)(W). Amendment adds provisions for the transfer of new vehicles between franchised dealerships as provided in Oregon Laws 2021, Chapter 572.

CHANGES TO RULE:

150-317-1410

Motor Vehicle Resale Certificate - Documentation Required

(1) Definition. For the purposes of this rule, "new vehicle" has the definition given to it in 15 U.S.C. Section 2821(8).

(2) Receipts from the sale or transfer of a motor vehicle between motor vehicle dealers are excluded from commercial activity, provided that the transfer occurs for the purpose of resale and is based on the transferee's need to meet a specific customer's preference: or the transfer is of a new vehicle between franchised dealerships.

(23) Motor vehicle dealers excluding receipts from the sale or transfer of a motor vehicle between dealers for resale to meet a specific customer's preference must retain a resale certificate documenting the excluded transaction provided under ORS 317A.100(1)(b)(W). A resale certificate is not required for transfers of new vehicles between franchised dealerships.

(34) Any document provided before or at the time the seller bills the purchaser may serve as a resale certificate if it contains the following information:

(a) The seller's name, address, federal identification number, and dealer license number from the appropriate licensing jurisdiction;

(b) The purchaser's name, address, federal identification number, and dealer license number from the appropriate licensing jurisdiction;

(c) A description of the vehicle, including the vehicle identification number, serial number, or other identifying number, and the make, model, and year of the vehicle;

(d) A statement, signed by the purchaser, their employee, or authorized representative, affirming that the vehicle described in the document is purchased or transferred for resale to meet a specific customer's preference; and

(e) The date ownership of the vehicle is transferred.

Statutory/Other Authority: ORS 305.100, 317A.143

Statutes/Other Implemented: ORS 317A.100(1)(b)(W)